

IN THE HAMILTON CIRCUIT COURT

CAUSE NO. **29 C 01 0610** *PL 1236*

STATE OF INDIANA,

Plaintiff,

v.

DEBRA J. CHAMBERLAIN,
individually and doing business as
HELLVEN CHOPPERS, INC.,

GARY G. CHAMBERLAIN, II,
individually and doing business as
HELLVEN CHOPPERS, INC., and

HELLVEN CHOPPERS, INC.

Defendants.

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C. J. Davis

COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. At all times relevant to this Complaint, the Defendant, Debra J. Chamberlain, was regularly engaged in the sale of items via the Internet from her principal place of business in Hamilton County, located at 13265 Britton Park Road, Fishers, Indiana, 46038.

3. At all times relevant to this Complaint, the Defendant, Gary G. Chamberlain, II, was regularly engaged in the sale of items via the Internet from his principal place of business in Hamilton County, located at 13265 Britton Park Road, Fishers, Indiana, 46038.

4. At all times relevant to this Complaint, the Defendant, Hellven Choppers, Inc., was a for-profit domestic corporation engaged in the sale of items via the Internet from its principal place of business in Hamilton County, located at 13265 Britton Park Road, Fishers, Indiana, 46038.

5. Upon information and belief, the Defendants, Debra J. Chamberlain and Gary G. Chamberlain, II, are the principals of the Defendant Corporation, Hellven Choppers, Inc., and have failed to maintain proper corporate form, failed to operate the Defendant Corporation as a distinct entity, and have used the Defendant Corporation to defraud others.

FACTS

6. At least since March 1, 2006, the Defendants have offered items for sale to consumers via the Internet.

A. Allegations Related to Gilbert Sanabria's Consumer Transaction.

7. On or about March 1, 2006, the Defendants entered into a contract via the Internet with Gilbert Sanabria ("Sanabria") of Hasbrouck Heights, New Jersey, wherein the Defendants represented they would sell a motorcycle to Sanabria for a total price of Two Thousand Four Hundred Ninety-Nine Dollars (\$2,499.00), which Sanabria paid.

8. Shortly after contract formation, the Defendants represented the motorcycle would be delivered within thirty (30) days.

9. Due to the Defendants' continued failure to deliver the motorcycle, Sanabria cancelled his order and the Defendants represented a refund would be forthcoming.

10. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented they would deliver the refund to Sanabria within a reasonable period of time.

11. As of today, the Defendants have yet to either deliver the motorcycle to Sanabria, or to provide a refund.

B. Allegations Related to Dennis P. Walton's Consumer Transaction.

12. On or about March 17, 2006, the Defendants entered into a contract via the Internet with Dennis P. Walton ("Walton") of Postdam, New York, wherein the Defendants represented they would sell a motorcycle to Walton for a total price of Two Thousand Five Hundred Dollars (\$2,500.00), which Walton paid.

13. On or about April 5, 2006, the Defendants told Walton the bike would arrive within a week or so.

14. On June 1, 2006, the Defendants told Walton their supplier would not provide the motorcycles and the Defendants would be issuing refunds.

15. The Defendants' original eBay auction listing stated, "Please allow 30-40 days [for delivery] due to the high demand and for build time as our choppers are built per order."

16. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented they would deliver the refund to Walton within a reasonable period of time.

17. As of today, the Defendants have yet to either deliver the motorcycle to Walton, or to provide a refund.

C. Allegations Related to John Corcoran's Consumer Transaction.

18. On or about March 18, 2006, the Defendants entered into a contract via the Internet with John Corcoran ("Corcoran") of Charlotte, North Carolina wherein the Defendants represented they would sell a motorcycle to Corcoran for a total price of Two Thousand Four Hundred Ninety-Nine Dollars (\$2,499.00), which Corcoran paid.

19. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the motorcycle within a reasonable period of time.

20. After complaining to the Defendants, the Defendants issued a partial refund to Corcoran in the amount of One Thousand One Hundred and Ninety-Nine Dollars (\$1,199.00).

21. As of today, the Defendants have yet to either deliver the motorcycle, or to refund the outstanding balance to Corcoran.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

22. The transactions identified in paragraphs 7, 12, and 18, are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(1).

23. The Defendants are “suppliers” as defined in Ind. Code § 24-5-0.5-2(3).

24. The Defendants’ representations to consumers they would sell the motorcycles to consumers as represented, when the Defendants knew or reasonably should have known consumers would not receive any such benefit, as referenced in paragraphs 7, 12, and 18, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

25. The Defendants’ representations to consumers they would issue refunds to consumers, including Sanabria and Walton, when the Defendants knew or reasonably should have known the transaction did not have any such rights or remedies, as referenced in paragraphs 9 and 14, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(8).

26. The Defendants’ representations to consumers the Defendants would deliver the motorcycles, or otherwise complete the subject matter of the consumer transactions within a stated or reasonable period of time, when the Defendants knew or reasonably should have known they would not, as referenced in paragraphs 8, 10, 13, 15, 16, and 19, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

27. The Defendants’ representations to consumers they would be able to purchase the motorcycles as advertised by the Defendants, when the Defendants did not intend to sell the motorcycle as represented, as referenced in paragraphs 7, 12, and 18,

constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS
OF THE DECEPTIVE CONSUMER SALES ACT**

28. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 27 above.

29. The misrepresentations and deceptive acts set forth in paragraphs 7, 8, 9, 10, 12, 13, 14, 15, 16, 18, and 19, were committed by the Defendants with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, Debra J. Chamberlain, Gary G. Chamberlain, II, individually and doing business as Hellven Choppers, Inc., and Hellven Choppers, Inc., for a permanent injunction, pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendants from the following:

- a. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have, which the Defendants know or reasonably should know it does not have;
- b. representing, expressly or by implication, the consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the Defendants know or reasonably should know the representation is false;

- c. representing, expressly or by implication, the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they cannot; and
- d. representing, expressly or by implication, the consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendants, when the Defendants do not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants for the following relief:

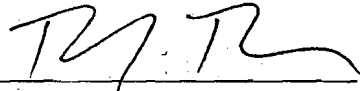
- a. cancellation of the Defendants' unlawful contracts with consumers, including but not limited to those consumers identified in paragraphs 7, 12, and 18, pursuant to Ind. Code § 24-5-0.5-4(d).
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of items from the Defendants, including but not limited to those consumers identified in paragraphs 7, 12, and 18, in an amount to be determined at trial;
- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

- d. on Count II of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. on Count II of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
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By:


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